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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,201	09/29/2003	Richard F. Gladney	SMCY-P01-081	9948
7590 ROPES & GRAY LLP EDWARD J. KELLY ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			EXAMINER SAFAVI, MICHAEL	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 02/26/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/675,201

Applicant(s)

GLADNEY, RICHARD F.

Examiner

M. Safavi

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 6, 9, 20, 21 and 52-64 is/are pending in the application.
- 4a) Of the above claim(s) 20, 21 and 60-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 9 and 52-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 29, 2007 has been entered.

Election/Restrictions

Claims 20, 21, and 60-64 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species of the invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 05, 2005.

Claims 20 and 21 are directed to the species of mattress depicted in Figs. 5 and 7 which species were non-elected in Applicant's reply of May 05, 2005. Claim 60 is directed to the species of mattress depicted in Fig. 11 which species were non-elected in Applicant's reply of May 05, 2005. Therefore, claims 20, 21, and 60 are withdrawn from consideration as to the merits along with claims 61-64.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 6, 9, 54, 55, and 57-59 are rejected under 35 U.S.C. 102(b) as being anticipated by Maddux '841. Maddux '841 discloses, Figs. 1, 3, and 4-6, a mattress having a substantially rectangular sleeping surface; and a pivoting member 15 attached to an exterior portion of a major surface of said mattress and configured as a tubular sleeve extending outwardly from the major surface, (see Figs. 4-6 for example, particularly Fig. 4 showing the sleeve 15 as extending above, or outwardly from, the major surface), with said pivoting member adapted to receive an attachment bar, (e.g., 16), for attachment to an adjustable bed frame, (**claims 1 and 6**). The tubular sleeve 15 comprises a fabric grommet, (**claim 9**). The mattress has a uniform thickness, (**claim 54**) and comprises coil springs 1, (**claim 55**). The pivoting member comprises a plurality of tubular sleeves 15 arranged between two side surfaces of the mattress, (**claim 57**). The mattress is a two-sided mattress having two major substantially rectangular surfaces, each adapted to form a sleeping surface; and pivoting members 15 configured as a tubular sleeve and attached to each of the major surfaces of said mattress, (see Fig. 3 for example), said pivoting members adapted to receive an attachment bar for attachment to an adjustable bed frame, (**claim 58**). The mattress is thus, reversible, (**claim 59**).

Claims 1, 6, 9, 52-54, and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by Husler '528. Husler '528 discloses, Figs. 2 and 3, a mattress having a substantially rectangular sleeping surface; and a pivoting member 51 attached to an exterior portion of a major surface of said mattress and configured as a tubular sleeve extending outwardly from the major surface, with said pivoting member adapted to receive an attachment bar, (with 5 removed allows for placement of any type rod or beam or 5 is an attachment bar), for attachment to an adjustable bed frame. The pivoting member is releasably attached to the mattress, (**claim 52**) as by a hook-and-loop fastener, col. 3, lines 44-45 and 55-58, (**claim 53**). The mattress has a uniform thickness, (**claim 54**). The pivoting member comprises a plurality of tubular sleeves arranged between two side surfaces of the mattress, (**claim 57**).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maddux '841 in view of Warner '676 or Sklar '427.

Each of Warner '676 or Sklar '427 teach that it is well known to form mattresses of pocket springs as is shown by Figs. 2 and 3 of Warner '676 and Figs. 1 and 4 of Sklar '427. Therefore, to have formed the Maddux '841 mattress with pocket springs, thus

providing a well-known alternative spring support, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by either of Warner '676 and Sklar '427.

Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Husler '528 in view of Warner '676 or Sklar '427.

Each of Warner '676 or Sklar '427 teach that it is well known to form mattresses of pocket springs as is shown by Figs. 2 and 3 of Warner '676 and Figs. 1 and 4 of Sklar '427. Therefore, to have formed the Husler '528 mattress with coil springs or pocket springs, thus providing a well known alternative spring support for a mattress, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by either of Warner '676 and Sklar '427.

Response to Arguments

Applicant's arguments filed March 14, 2007 have been fully considered but they are not persuasive. As expressed within the above rejection of claim 1 over Maddux '841, Maddux '841 discloses a pivoting member 15 in the form of a tubular sleeve that is "attached to an exterior portion of a major surface" of the mattress while "extending outwardly from the major surface". As for "adapted for attachment to an adjustable bed frame", claim 1 is directed to a mattress with pivoting member attached to a major surface thereof. Maddux discloses a pivoting member 15 attached to a major surface of a mattress. As for "pivoting member being adapted for attachment to an adjustable bed

frame", pivoting member 15 of Maddux is adapted to receive an attachment bar and pivoting member 15 of Maddux can be attached to an adjustable bed frame if need be. Applicant's argument to "pivoting member being adapted for attachment to an adjustable bed frame" appears directed to an intended use when the language of claim 1 is directed to a "mattress" per se. For example, bar 16 of Maddux can serve as an attachment bar or can be replaced by an attachment bar that can attach to an adjustable bed frame.

With regard to Husler '528, Applicant argues that Husler is not a "mattress for an adjustable bed" or that "the springy longitudinal beans...[of Husler] do not serve as a pivoting member and are not described as being located at pivot points". However, Husler meets the language of claim 1 as set forth above with claim 1 being directed to a mattress per se. Husler discloses a pivoting member 51 adapted to receive an attachment bar. For example, beam 5 of Husler can serve as an attachment bar or can be replaced by an attachment bar that can attach to an adjustable bed frame. As for Applicant's arguments found within the second full paragraph on page 8 of the response, elements 1, 2, 3, and 4 constitute a mattress. As such, Husler, '528 discloses, "a pivoting member attached to a major surface of said mattress". As for Applicant's arguments that "[t]here is nothing in Husler that describes the beam sheath 15 or the springy longitudinal beams 5 as being attached to a bed frame, moreso [sic] an adjustable bed frame" or that "Husler does not disclose the pivoting member as being adapted for attachment to an adjustable bed frame", the instantly rejected claims are directed to a mattress per se. As such, Husler serves to read upon the language of

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those claims rejected over Husler. For example, pivoting member 51 of Husler is adapted to receive an attachment bar and pivoting member 51 of Husler can be attached to an adjustable bed frame if need be. Applicant's argument found within the third full paragraph on page 8 of the response appears directed to an intended use when the language of claim 1 is directed to a "mattress" per se.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/M. Safavi/
Primary Examiner, Art Unit 3637

M. Safavi
February 12, 2008

Application Number**Application/Control No.**

10/675,201

**Applicant(s)/Patent under
Reexamination**

GLADNEY, RICHARD F.

Examiner

M. Safavi

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